

Fiqh

Arabic
فقه
Transliteration
Fiqh
Translation
Islamic jurisprudence

Fiqh (Arabic: فقه Arabic pronunciation: [fiqh]) is Islamic jurisprudence. *Fiqh* is an expansion of the Sharia Islamic law—based directly on the Quran and Sunnah—that complements Sharia with evolving rulings/interpretations of Islamic jurists.

Fiqh deals with the observance of rituals, morals and social legislation in Islam. There are four prominent schools (*madh'hab*) of *fiqh* within Sunni practice and two within Shi'a practice. A person trained in *fiqh* is known as a *Faqih* (plural *Fuqaha*).^[1]

Etymology

The word *fiqh* is an Arabic term meaning "deep understanding" or "full comprehension". Technically it refers to the science of Islamic law extracted from detailed Islamic sources (which are studied in the principles of Islamic jurisprudence)—the process of gaining knowledge of Islam through jurisprudence, and the body of legal advisements so derived, is known as *fiqh*.

The historian Ibn Khaldun describes *fiqh* as "knowledge of the rules of God which concern the actions of persons who own themselves bound to obey the law respecting what is required (*wajib*), forbidden (*haraam*), recommended (*mandūb*), disapproved (*makrūh*) or merely permitted (*mubah*)".^[2]

This definition is consistent amongst the jurists.

In Modern Standard Arabic, *fiqh* has come to mean jurisprudence in general, be it Islamic or secular. It is thus possible to speak of Chief Justice John G. Roberts, Jr. as an expert in the common law *fiqh* of the United States, or of Farouk Sultan as an expert in the civil law *fiqh* of Egypt.

Introduction

There are cases where the Qur'an gives a clearly defined and concrete answer on how to deal with different issues. This includes how to perform the ritual purification (Arabic: *wudu*) before the obligatory daily prayers (Arabic: *salat*). On other issues, the Qur'an alone is not enough to make things clear. For example, the Qur'an states one needs to engage in daily prayers (Arabic: *salat*) and fast (Arabic: *sawm*) during the month of Ramadan, however, it does not define how to perform these duties. The details about these issues can be found in the traditions of Islamic prophet Muhammad (Arabic: *Sunnah*). This is true for most detailed issues, thus the Qur'an and Sunnah are the basis for the Islamic Divine Law (Arabic: *Shariah*).

With regard to some topics, the Qur'an and Sunnah are simply silent. In those cases, the Muslim jurists (Arabic: *Fuqaha*) try to arrive at conclusions using other tools. Sunni jurists use analogy (Arabic: *Qiyas*) and historical consensus of the community (Arabic: *Ijma*). The conclusions arrived at with the aid of these additional tools constitute a wider array of laws than the Sharia consists of, and is called **fiqh**. Thus, in contrast to the *sharia*, *fiqh* is not regarded as sacred, and the schools of thought have differing views on its details, without viewing other conclusions as sacrilegious. This division of interpretation in more detailed issues has resulted in different schools of

thought (Arabic: *madh'hab*).

This wider concept of **Islamic jurisprudence** is the source of a range of laws in different topics that govern the lives of the Muslims in all facets of everyday life.

Islamic Law

Fida Hussain solangi, a renowned jurist has discoursed upon the following issues as under:

Islamic law (*fiqh*) covers two main areas, rules in relation to actions and rules in relation to circumstances surrounding actions.

Rules in relation to actions ('*amaliyya* — عملية) comprise:

- Obligation (*fardh*)
- Recommendation (*mustahabb*)
- Permissibility (*mubah*)
- Disrecommendation (*makrooh*)
- Prohibition (*haraam*)

Rules in relation to circumstances (*wadia'*) comprise:

- Condition (*shart*)
- Cause (*sabab*)
- Preventor (*mani*)
- Permit/Enforce (*rukhsah, azeemah*)
- Valid/Corrupt/Invalid (*sahih, faasid, batil*)
- In time/Debt/Repeat (*adaa, al-qadaa, i'ada*)

Fiqh is grouped into two parts:

1. Ibadaat (worship)
2. Mua'malaat (dealings & transactions)

Fields of jurisprudence

- Islamic economical jurisprudence فقه المعاملات
- Islamic political jurisprudence فقه السياسة
- Islamic marital jurisprudence
- Islamic criminal jurisprudence فقه العقوبات
- Islamic etiquettical jurisprudence الآداب
- Islamic theological jurisprudence
- Islamic hygienical jurisprudence
- Islamic military jurisprudence فقه الجهاد

Methodologies of jurisprudence *usul al-fiqh* (أصول الفقه)

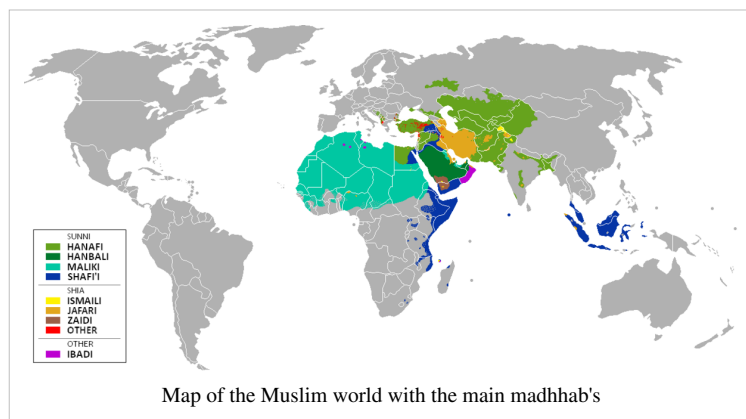
The Modus operandi of the Muslim jurist is known as *usul al-fiqh* (principles of jurisprudence).

There are different approaches to the methodology used in *fiqh* to derive *sharia* from the Islamic sources. The main methodologies are:

- The four classical Sunni schools are, in chronological order: the Hanafi school, the Maliki school, the Shafi'i school and the Hanbali school. They represent the generally accepted Sunni authority for Islamic jurisprudence.
- *Jafari fiqh*, or the Shi'a *fiqh*

Other schools are the Zaidi, Zahiri, Sufian Al'thawree, Sufian bin O'yayna, Layth bin Sa'ad, Tabari and Qurtubi schools.

The four schools of Sunnis



The four schools (or Madh'hab) of Sunni Muslims are each named by students of the classical jurist who taught them. The Sunni schools (and where they are commonly found) are

- Hanafi (The Levant, Turkey, the Balkans, Central Asia, Indian subcontinent, Iran, Afghanistan, Jordan, China and Egypt)
- Maliki (North Africa, the Muslim areas of West Africa, Kuwait, the United Arab Emirates and Bahrain)
- Shafi'i (Yemen, Somalia, Djibouti, Eritrea, Ethiopia, Southern Iran, Muslim Southeast Asia, Jordan, Egypt, Swahili Coast, Maldives and southern parts of India)
- Hanbali (Saudi Arabia and Qatar).

These four schools share most of their rulings, but differ on the particular *hadiths* they accept as authentic and the weight they give to analogy or reason (*qiyas*) in deciding difficulties.

The Hanafi school was the earliest established under the jurist Imam Abu Hanifa, who was born and taught in Iraq. Imam Abu Hanifa (80A.H.–150A.H.), whose real name was Nu'man ibn Thabit, was born in the city of Kufa (modern day Iraq) in the year 80 A.H (689 A.D). Born into a family of tradesmen, the Imam's family were of Persian origin. Under Imam Abu Hanifa, the witr prayer was considered to be compulsory and the Hanafis also differed with other sects in relation to methods of taking ablution, prayers and payment of tithe or *zakat*. Imam Abu Hanifa also differed with the other three schools in many areas including the type of punishments meted out for various crimes in Islam. On the whole, the Hanafi school of jurisprudence could be said to have the most differences with other three schools.

Students of Imam Malik established the Maliki school of which a majority now can be found in North Africa and some Persian gulf states . Imam Malik, whose real name was Abu Abdullah, Malik bin Anas, was born in Medina in the year 715 AD. His ancestral home was in Yemen, but his grandfather settled in Medina after embracing Islam. He received his education in Medina, which was the most important seat of Islamic learning, and where the immediate descendants of Muhammad's (SAW) followers lived. Imam Malik was attracted to the study of law, and devoted himself to the study of *fiqh*. His principal book, the *Kitab al-Muwatta*, is one of the earliest surviving books on *hadith* and *fiqh*. Differences under the Maliki school included the fact that those following the Maliki school could state their purpose (or *niat*) once only for compulsory fasting which is valid for the whole month of Ramadhan whilst for the Shafi'i school (see below), one would have to state his purpose every day of the month of Ramadhan for his fast to be valid the next day.

Ja'fari jurisprudence

The Ja'fari school (Iran, Iraq, Azerbaijan, Lebanon, Afghanistan, Bahrain, Pakistan, India and Saudi Arabia) is associated with Imam Jafar-as-Sadiq. The *fatwas*, or time and space bound rulings of early jurists, are taken rather more seriously in this school, due to the more hierarchical structure of Shia Islam, which is ruled by the *Imams*. But they are also more flexible, in that every jurist has considerable power to alter a decision according to his opinion.

The Jafari school uses '*aql* "intellect" instead of *qiyas* in the Sunni schools, when establishing Islamic laws.

Ismaili Fatimid jurisprudence

Daim al-Islam is a book on the rulings of Islam followed by Ismaili Muslims who adhere to the Shi'a Ismaili Fatimid fiqh. It describes manners and etiquette, including Ibadat in the light of guidance provided by the Ismaili Imams. The book emphasizes what importance Islam has given to manners and etiquette along with the worship of God, citing the traditions of the first four Imams of the Shi'a Ismaili Fatimid school of thought.

Arguments for and against reform

Each school reflects a unique *al-urf* or culture (a cultural practice that was influenced by traditions), that the classical jurists themselves lived in, when rulings were made. Some suggest that the discipline of *isnad*, which developed to validate *hadith* made it relatively easy to record and validate also the rulings of jurists. This, in turn, made them far easier to imitate (*taqlid*) than to challenge in new contexts. The argument is, the schools have been more or less frozen for centuries, and reflect a culture that simply no longer exists. Traditional scholars hold that religion is there to regulate human behavior and nurture peoples moral side and since human nature has not fundamentally changed since the beginning of Islam a call to modernize the religion is essentially one to relax all laws and institutions.

Early *shariah* had a much more flexible character, and some modern Muslim scholars believe that it should be renewed, and that the classical jurists should lose special status. This would require formulating a new fiqh suitable for the modern world, e.g. as proposed by advocates of the Islamization of knowledge, which would deal with the modern context. This modernization is opposed by most conservative *ulema*. Traditional scholars hold that the laws are contextual and consider circumstance such as time, place and culture, the principles they are based upon are universal such as justice, equality and respect. Many Muslim scholars argue that even though technology may have advanced, the fundamentals of human life have not and is in the scope of current laws.

Early history

Further information: Islamic economics in the world

The formative period of Islamic jurisprudence stretches back to the time of the early Muslim communities. In this period, jurists were more concerned with pragmatic issues of authority and teaching than with theory.^[3] Progress in theory happened with the coming of the early Muslim jurist Muhammad ibn Idris ash-Shafi'i (767–820), who codified the basic principles of Islamic jurisprudence in his book *ar-Risālah*. The book details the four roots of law (Qur'an, Sunnah, *ijma*, and *qiyas*) while specifying that the primary Islamic texts (the Qur'an and the *hadith*) be understood according to objective rules of interpretation derived from scientific study of the Arabic language.^[4]

Possible links with Western law

A number of important legal institutions were developed by Muslim jurists during the classical period of Islam, known as the Islamic Golden Age. One such institution was the *Hawala*, an early informal value transfer system, which is mentioned in texts of Islamic jurisprudence as early as the 8th century. *Hawala* itself later influenced the development of the agency in common law and in civil laws such as the *aval* in French law and the *avallo* in Italian law.^[5] The "European commenda" (Islamic *Qirad*) used in European civil law may have also originated from Islamic law.^[6]

The *Waqf* in Islamic law, which developed during the 7th–9th centuries, bears a notable resemblance to the trusts in the English trust law.^[7] For example, every *Waqf* was required to have a *waqif* (settlor), *mutawillis* (trustee), *qadi* (judge) and beneficiaries.^[8] The trust law developed in England at the time of the Crusades, during the 12th and 13th centuries, was introduced by Crusaders who may have been influenced by the *Waqf* institutions they came across in the Middle East.^{[9] [10]}

The Islamic *lafif* was a body of twelve members drawn from the neighbourhood and sworn to tell the truth, who were bound to give a unanimous verdict, about matters "which they had personally seen or heard, binding on the judge, to settle the truth concerning facts in a case, between ordinary people, and obtained as of right by the plaintiff." The only characteristic of the English jury which the Islamic *lafif* lacked was the "judicial writ directing the jury to be summoned and directing the bailiff to hear its recognition." According to Professor John Makdisi, "no other institution in any legal institution studied to date shares all of these characteristics with the English jury." It is thus likely that the concept of the *lafif* may have been introduced to England by the Normans, who conquered both England and the Emirate of Sicily, and then evolved into the modern English jury.^[6]

Several other fundamental common law institutions may have been adapted from similar legal institutions in Islamic law and jurisprudence, and introduced to England by the Normans after the Norman conquest of England and the Emirate of Sicily, and by Crusaders during the Crusades. In particular, the "royal English contract protected by the action of debt is identified with the Islamic *Aqd*, the English assize of novel disseisin is identified with the Islamic *Istihqaq*, and the English jury is identified with the Islamic *lafif*." Other English legal institutions such as "the scholastic method, the licence to teach", the "law schools known as Inns of Court in England and *Madrasas* in Islam" and the "European commenda" (Islamic *Qirad*) may have also originated from Islamic law.^[6] The methodology of legal precedent and reasoning by analogy (*Qiyas*) are also similar in both the Islamic and common law systems.^[11] These influences have led some scholars to suggest that Islamic law may have laid the foundations for "the common law as an integrated whole".^[6]

Notes

- [1] Glasse, Cyril, *The New Encyclopedia of Islam*, Altamira, 2001, p.141
- [2] Levy (1957). Page 150.
- [3] Weiss (2002), pp.3, 161.
- [4] Weiss (2002), p.162.
- [5] Badr, Gamal Moursi (Spring, 1978). "Islamic Law: Its Relation to Other Legal Systems". *The American Journal of Comparative Law* (American Society of Comparative Law) **26** (2 – Proceedings of an International Conference on Comparative Law, Salt Lake City, Utah, February 24–25, 1977): 187–198 [196–8]. doi:10.2307/839667. JSTOR 839667
- [6] Makdisi 1999
- [7] Gaudiosi 1988
- [8] Gaudiosi 1988, pp. 1237–40
- [9] Hudson 2003, p. 32
- [10] Gaudiosi 1988, pp. 1244–5
- [11] El-Gamal, Mahmoud A. (2006). *Islamic Finance: Law, Economics, and Practice*. Cambridge University Press. p. 16. ISBN 0521864143

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External links

- imamfaisal.com (<http://www.imamfaisal.com/>) - Several mp3s explaining the fiqh of tahara and fiqh of marriage according to the scholars.

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